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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Kristen Burnham, individually and as
9 representative of the estate of Caroline
10 Burnham,

No. CV07-8017-PCT-DGC

ORDER

11 Plaintiff,

12 vs.

13 United States of America,

14 Defendant.

15 Plaintiff has filed a motion for new trial. Doc. 195. For the reasons that follow,
16 the motion will be denied.

17 Plaintiff again complains that the Court erred in excluding the expert testimony of
18 Anselmo Nagera. The Court explained its reasons for excluding his testimony, in detail,
19 on July 20, 2009. *See* Doc. 118 at 8-10. Mr. Nagera was not timely disclosed as an
20 initial expert by Plaintiff, and Plaintiff's subsequent attempt to disclose him as a rebuttal
21 expert was inappropriate for reasons explained in the Court's previous order. Doc. 118.
22 The Court's order was not set aside by the Ninth Circuit on appeal, and other courts have
23 agreed with the conclusion. *See, e.g., Atmel Corp. v. Information Storage Devices, Inc.*,
24 189 F.R.D. 410, 416 (N.D. Cal. 1999) ("to now allow Mr. Kern to testify on direct
25 examination to matters deliberately ignored in his Rule 26(a)(2)(B) report would simply
26 encourage litigants to evade the expert-disclosure rules. It would disrupt the orderly
27 process of trial preparation to require a new round of expert reports and a new round of
28 expert depositions"); *see also Crowley v. Chait*, 322 F. Supp. 2d 530, 551 (D. N.J. 2004)

1 (an expert's rebuttal report "is not an opportunity for the correction of any oversights in
2 the plaintiff's case in chief.").

3 Plaintiff's motion takes issue with factual findings made by the Court after trial.
4 Such disagreement does not provide a basis for a new trial.

5 Plaintiff asks the Court to order post-trial mediation. Given that Defendant
6 prevailed at trial, the Court sees no basis for such an order.

7 **IT IS ORDERED** that Plaintiff's motion for a new trial (Doc. 195) is **denied**.

8 Dated this 20th day of October, 2011.

9
10 *David G. Campbell*
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12 David G. Campbell
13 United States District Judge
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